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| APPLICATION NO.                     | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-------------------------------------|-------------|----------------------|---------------------|------------------|
| 10/666,838                          | 09/17/2003  | Stephen C. Beal      | 022010-000210US     | 5785             |
| 20350                               | 7590        | 05/04/2007           | EXAMINER            |                  |
| TOWNSEND AND TOWNSEND AND CREW, LLP |             |                      | BROWN, MICHAEL A    |                  |
| TWO EMBARCADERO CENTER              |             |                      | ART UNIT            | PAPER NUMBER     |
| EIGHTH FLOOR                        |             |                      | 3772                |                  |
| SAN FRANCISCO, CA 94111-3834        |             |                      |                     |                  |
| MAIL DATE                           |             | DELIVERY MODE        |                     |                  |
| 05/04/2007                          |             | PAPER                |                     |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                 |              |
|------------------------------|-----------------|--------------|
| <b>Office Action Summary</b> | Application No. | Applicant(s) |
|                              | 10/666,838      | BEAL ET AL.  |
|                              | Examiner        | Art Unit     |
|                              | Michael Brown   | 3772         |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 February 2007.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-35 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-35 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-2, 8-9, 16-17, 20, 23-24, 28-31 and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nordvik in view of Johansen '164.

Nordvik discloses in figure 2 a system for expressing milk from a human breast, comprising a control system (the entire device) adapted to be worn by a user, a massaging means (8 and an oscillating pump), an expression means 4, containment means (col. 5, lines 41-44), the expression means and the massaging means are operated independently by a control system (valves can control the massage means separate from the expression means or different pumps can operate both independently), the expression means are pneumatically operated (by a pump), pivotable (the member 4 can be pivoted about a secured point of the breast), the containment means includes a pre-sterile disposable container (a baby bottle), the system includes components (valves) that are adjustable and the expression and massage patterns may be saved to memory in order to repeat or download to a medical documentation, the system is adapted to express milk from one breast at a time, from both breast at one time or alternatively from each breast (moving the device from one

breast to the other or putting one on each breast), the system operates independently or in combination with valves, pumps and bladders, a method of expressing milk and a rechargeable battery (col. 7, lines 26-30). However, Nordvik doesn't disclose a pair of expression members. Johansen teaches in figures 1-3 a system for expressing milk from a human breast comprising a pair of opposing expression members 42. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the pair of opposing expression members as taught by Johansen could be substituted for the one expression member disclosed by Nordvik in order to be able to apply a massaging effect to the breast with different expression members. Thus, being able to provide a more uniform massage to the breast.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-7 and 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of LaTorre and Nordvik (the embodiment in fig. 3).

Nordvik discloses in figure 2 a system for expressing milk from a human breast, substantially as claimed, that further comprises a massaging means that includes a series of inflatable rings (9, 12) and a plurality of bladders (6, 10), the bladders are

operated pneumatically, arranged in an annular manner (fig. 2) and in a liner manner (they form a curved line) and the expression means is pneumatically operated (by a pump). Johansen teaches in figures 1-3 a system for expressing milk comprising a pair of opposed expression members. However, neither Nordvik or Johansen discloses a Velcro fastener used to close a plurality of bladders having an open section. LaTorre teaches in figure 6 a breast cover comprising a Velcro type fastener. Nordvik teaches in figure 3 a system for expressing milk from a human breast comprising an expression means (13, 14), in the shape of a bellows. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the Velcro fastener as taught by LaTorre could be used to fasten the massage means and the expression means disclosed by Nordvik and taught by Johansen around the user's breast. The Velcro type fastener would allow the user to open and fasten the device around the breast. The bellows shaped expression means (fig. 3, which is a different embodiment, different invention) could be substituted for the expression means (fig. 2, different embodiment, different invention) disclosed by Nordvik because both expression means are functionally equivalent.

Claims 18-19, 21-22 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Palmer.

Nordvik discloses in figure 2 a system for expressing milk from a human breast, substantially as claimed. Johansen teaches in figures 1-3 a system for expressing milk comprising a pair of opposing expression members. However, neither Nordvik or

Johansen discloses the system being operated automatically, the system being incorporated into a wearable garment, or a controller worn around the user's waist. Palmer teaches in figures 1-3E a system for expressing milk from a human breast comprising a wearable garment 2 and a controller 3 that can be worn around the user's waist. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the garment and the controller as taught by Palmer could be incorporated into the system disclosed by Nordvik and taught by Johansen. The garment could be used to hold the device in place and the controller could be used to control the massaging and expression means. The system could operate automatically by the microprocessor as taught by Palmer.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Silver '580.

Nordvik discloses in figure 2 a system for expressing milk from a human breast, substantially as claimed. Johansen teaches in figures 1-3 a system for expressing milk comprising a pair of opposing expression members. However, Nordvik nor Johansen discloses a heating means. Silver teaches in figure 3 a system for expressing milk from a human breast comprising a heating means 10. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the heating means as taught by Silver could be incorporated into the system disclosed by Nordvik and taught by Johansen in order to use the heating means to heat the user's breast.

***Response to Arguments***

Applicant's arguments with respect to claims 1-35 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M. Brown  
April 17, 2007



MICHAEL A. BROWN  
PRIMARY EXAMINER